United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

B p/s

74-2001

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

L. John Jacobi and Robert Gambera, individually, on behalf of the members of the American Association of Securities Representatives, and on behalf of all other securities representatives similarly situated,

Plaintiffs-Appellants,

vs.

Bache & Co. Incorporated; Walston & Co., Inc.; Thomson & McKinnon Auchincloss, Inc. (formerly Thomson & McKinnon, Inc.); Hornblower & Weeks-Hemphill, Noyes; Loeb, Rhoades & Company; Tucker, Anthony & R. L. Day; Harris, Upham & Co., Inc.; Dominick Int'l. Corp.; Halle & Stieglitz, Inc.; Goodbody & Co.; Bear, Stearns & Co.; Lehman Bros.; Kidder Peabody & Co., Inc.; R. W. Pressprich & Co., Inc.; Dean Witter & Co., Inc; W. E. Hutton; Reynolds & Co.; Paine, Webber, Jackson & Curtis; Scheinman, Hockstin & Trotta, Inc.; Pressman Frolich & Frost, Inc.; Newburger, Loeb & Co.; Rauscher, Pierce Securities Corp.; Oppenheimer & Co.; Steiner Rouse & Co., Inc.; L. F. Rothschild & Co.; Spencer Trask & Co.; Smith Barney & Co., Inc.; and The New York Stock Exchange, Inc.,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SEPARATE BRIEF FOR
NEW YORK STOCK EXCHANGE
MEMBER FIRM APPELLEES

3

(A List of Counsel Appears at Pages 13-14.)

TABLE OF CONTENTS

	PAGE
Introductory Statement	2
ARGUMENT:	
POINT I—The Exchange Act Imbues the New York Stock Exchange with Governmental Authority over its Members in the Enactment of Rules for the Protection of Investors	3
POINT II—The Exchange Act Confers Broad Disciplinary Authority on the New York Stock Exchange for Dealing with Members who Violate Exchange Rules	10
POINT III—No "Combination" or "Conspiracy" Within the Meaning of the Sherman Act Exists in this Case With Respect to the Member Firm Defendants	12
CONCLUSION	13

TABLE OF AUTHORITIES

Cases:

Eastern R.R. Conference v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961)	3, 13
Gordon v. *New York Stock Exchange*, 366 F. Supp. 1261 (S.D.N.Y. 1973), *aff'd*, 498 F.2d 1303 (2d Cir. 1974)	8, 11
International Indus., Inc. v. *American Stock Exchange*, 452 F.2d 935 (5th Cir. 1971)	11
Kaplan v. *Lehman Bros.*, 250 F. Supp. 562 (N.D. Ill. 1966), *aff'd*, 371 F.2d 409 (7th Cir.), *cert. denied*, 389 U.S. 954 (1967)	8

PAGE

Merrill Lynch, Pierce, Fenner & Smith v. *Ware*, 414 U.S. 117 (1973) 4, 6, 8, 9, 12

Parker v. *Brown*, 317 U.S. 341 (1943) 3, 13

Silver v. *New York Stock Exchange*, 373 U.S. 341 (1963) 4, 8, 9

Thill Securities Corp. v. *New York Stock Exchange*, 433 F.2d 264 (7th Cir. 1970), *cert. denied*, 401 U.S. 994 (1971) 8

Villani v. *New York Stock Exchange*, 348 F. Supp. 1185 (S.D.N.Y. 1972), *aff'd*, 489 F.2d 1 (2d Cir. 1973) 11

Statutes and Rules:

Securities Exchange Act of 1934, 15 U.S.C. §§ 78a, *et seq.*:

Section 5, 15 U.S.C. § 78e 4

Section 6, 15 U.S.C. § 78f 4, 5, 6, 8, 9, 10, 11

Section 19, 15 U.S.C. § 78s 5, 6, 7, 8, 9, 11

Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.* 2, 12

Securities and Exchange Act Rules:

Rule 6a-2, 17 C.F.R. § 240.6a-2 5

Rule 17a-8, 17 C.F.R. § 240.17a-8 .... 5, 6

Other Authorities:

Report of Special Study of Securities and Exchange Commission, H.R. Doc. No. 95, Pt. 1, 88th Cong., 1st Sess. (1963) 3

IN THE

United States Court of Appeals

For the Second Circuit

74-2001

L. JOHN JACOBI and ROBERT GAMBERA, individually, on behalf of the members of the AMERICAN ASSOCIATION OF SECURITIES REPRESENTATIVES, and on behalf of all other securities representatives similarly situated,

Plaintiffs-Appellants,

vs.

PACHE & CO. INCORPORATED; WALSTON & CO., INC.; THOMSON & MCKINNON AUCHINCLOSS, INC. (formerly THOMSON & MCKINNON, INC.); HORNBLOWER & WEEKS-HEMPHILL, NOYES; LOEB, RHOADES & COMPANY; TUCKER, ANTHONY & R. L. DAY; HARRIS, UPHAM & CO., INC.; DOMINICK INT'L. CORP.; HALLE & STIEGLITZ, INC.; GOODBODY & CO.; BEAR, STEARNS & CO.; LEHMAN BROS.; KIDDER PEABODY & CO., INC.; R. W. PRESSPRICH & CO., INC.; DEAN WITTER & CO., INC; W. E. HUTTON; REYNOLDS & CO.; PAINE, WEBBER, JACKSON & CURTIS; SCHEINMAN, HOCKSTIN & TROTTA, INC.; PRESSMAN FROLICH & FROST, INC.; NEWBURGER, LOEB & CO.; RAUSCHER, PIERCE SECURITIES CORP.; OPPENHEIMER & CO.; STEINER ROUSE & CO., INC.; L. F. ROTHSCHILD & CO.; SPENCER TRASK & CO.; SMITH BARNEY & CO., INC.; and THE NEW YORK STOCK EXCHANGE, INC.,

Defendants-Appellees.

SEPARATE BRIEF FOR NEW YORK STOCK EXCHANGE MEMBER FIRM APPELLEES

Introductory Statement

The appellee New York Stock Exchange member firms (the "member firm defendants") submit this brief as a supplement to the brief filed on behalf of all appellees, in which they also join, and to put forward a separate ground for affirmance peculiarly applicable to them.

The plaintiffs brought this action against the member firm defendants upon the theory that these firms violated various provisions of the federal antitrust laws by adhering to Article XV, Section 9 of the Constitution of the New York Stock Exchange (the "Exchange"), which prohibited them from paying compensation to their registered representative employees based upon the interim service charge in effect from April 1970 to March 1972. This adherence to the Constitution and rules of the Exchange is the sole allegedly unlawful conduct attributed by plaintiffs to the member firm defendants.

The Securities Exchange Act of 1934 confers extensive governmental power and responsibilities upon the Exchange for use in the regulation and disciplining of its member firms. For the firms the Exchange is, in effect, the government, and its rules have the force of law. As a consequence the member firm defendants submit that, as a matter of law, where no more is proved against them than their good faith obedience to a duly authorized rule of the Exchange, no "conspiracy" or "combination" within the meaning of the Sherman Act exists and no liability against them may be found.[1]

---

[1] There is no evidence of what might be called an "actual" conspiracy among any of the member firm defendants to restrain trade in registered representatives' compensation, nor any proof that the Exchange was employed by defendants simply as the passive medium or instrument of such an alleged conspiracy. Were such evidence of private agreements in the record, this

ARGUMENT

I

The Exchange Act Imbues the Exchange with Governmental Authority over its Members with respect to the Enactment of Rules for the Protection of Investors.

The Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*, (the "Exchange Act" or the "Act") sets forth a comprehensive scheme for governmental regulation of "securities markets and the business of securities brokers and dealers." Report of Special Study of Securities and Exchange Commission, H.R. Doc. No. 95, Pt. 1, 88th Cong., 1st Sess., 3 (1963). The central concept of that scheme is indirect government regulation of securities firms through the medium of national securities exchanges. The basic plan of the Act is straightforward: the government, through the Securities and Exchange Commission (the "SEC"), exercises supervision over the principal rules and practices of securities exchanges; the exchanges, then, in turn, further regulate the practices and activities of their members.[2]

---

might be a substantially different case. See *Silver* v. *New York Stock Exchange*, 373 U.S. 341, 371 n.5 (1963) (Stewart J., dissenting) and cases there cited; but *cf. Parker* v. *Brown*, 317 U.S. 341 (1943); *Eastern R.R. Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961). As the record stands, however, the evidence makes clear that the prohibition on sharing the service charge was imposed on the member firm defendants from above by the Exchange in order to alleviate a perilous financial situation and meet the concerns for investor protection expressed by the SEC. See, *e.g.*, Pltfs' Ex. 63 (277A-287A)*; Pltfs' Ex. 1 (248A-250A); Pltfs' Ex. 11 (259A-261A); Pltfs' Ex. 9 (255A-258A); Trial Transcript (89A-92A). The member firm defendants are therefore being charged solely with compliance with the Constitution and rules of the Exchange.

* References are to pages in the Joint Appendix filed in this appeal.

[2] There are, of course, broad areas of "concurrent jurisdiction" between the SEC and national securities exchanges in the regula-

The aim of the Act is to advance the public interest in the integrity of securities markets and the protection of investors through a policy of supervised "self-regulation". *Merrill Lynch, Pierce, Fenner & Smith* v. *Ware*, 414 U.S. 117, at 130 (1973). The main "aspect of the statutorily imposed duty of self-regulation is the obligation [of exchanges] to formulate rules governing the conduct of exchange members." *Silver* v. *New York Stock Exchange*, 373 U.S. 341, 353 (1963).

The Exchange is, therefore, altogether unlike a private voluntary association in relation to its members; rather, it bears the character of a governmental institution in the enactment of rules for the governance of their conduct. The provisions of the Exchange Act which imbue the Exchange with this character are clear, unambiguous, and of particular relevance to the facts of the present case.

Under the Act, all major stock exchanges are required to register with the Securities and Exchange Commission. §§ 5 and 6, 15 U.S.C. §§ 78e and 78f. It is unlawful for securities transactions to be conducted on an unregistered exchange. § 5, 15 U.S.C. § 78e. Registration of an exchange is made conditional, by the Act, upon the exchange's showing that its rules are "just and adequate to insure fair dealing and to protect investors." § 6(d), 15 U.S.C. § 78f(d). The exchange must file copies of its constitution, bylaws and rules with the Commission, § 6(a)(3), 15 U.S.C. § 78f(a)(3); and, further, in order to be registered, it must pledge to furnish the Commission with any amend-

---

tion and disciplining of member firms. As a practical matter, however, the Exchange Act recognized that the "government simply could not regulate effectively every aspect of the [securities] industry." *Merrill Lynch, Pierce, Fenner & Smith* v. *Ware*, 414 U.S. 117, at 128 n.9 (1973), and authorities there cited. Hence the delegation of broad regulatory power to the exchanges. See §§ 6(b) and 6(c), 15 U.S.C. §§ 78f(b) and 78f(c).

ments to its rules "forthwith upon their adoption," § 6(a)(4), 15 U.S.C. § 78f(a)(4), and also file annual reports concerning rule amendments. Exchange Act Rule 6a-2, 17 C.F.R. § 240.6a-2.

In addition to these general supervisory aspects of the Act, there are a number of specific regulatory provisions which underscore the governmental character of exchanges in the formulation of rules for the governance of their members. Principal among these is Section 19(b), 15 U.S.C. § 78s(b), which provides a basis for continuing and particularized SEC review of exchange rules in a number of designated areas. Under that section, the SEC is empowered to alter or supplement rules of an exchange concerning, *inter alia*, "(1) safeguards in respect of the financial responsibility of members . . . [and] (9) the fixing of reasonable rates of commission, interest, listing and other charges. . . ." These are, in contemplation of the Act, areas of particular sensitivity in which an exchange is charged with primary responsibility, subject always to the continuing scrutiny of the Commission.

Furthermore, in aid of its Section 19(b) jurisdiction, the SEC has enacted Rule 17a-8, 17 C.F.R. § 240. 17a-8. That rule requires registered exchanges to file proposed changes in their rules with the Commission at least three weeks prior to adoption. Although the intent of the rule (particularly when viewed in connection with the SEC's Section 19(b) responsibilities) is to provide maximum protection for investors, its inevitable effect from the standpoint of exchange *members* is further to clothe the exchange with the authority of a government agency. It is the exchange, not the member firms, which submits proposed rule changes to the SEC, supplies supporting information required by the Commission, negotiates changes in new proposed rules, and, finally, receives notices of the Com-

mission's non-objection when such is forthcoming. When the exchange advises its members that a new rule has been approved by the SEC and adopted by the Board of Governors, it speaks, for all practical purposes, for the Commission or, at the very least, under color of the Commission's authority.

The thrust of the above-mentioned statutory provisions and rules is to confer upon securities exchanges what the Supreme Court described only last Term as a "measure of *congressionally delegated authority* for self-regulation in the national interest." *Merrill Lynch, Pierce, Fenner & Smith* v. *Ware*, 414 U.S. at 134 (emphasis added). It is precisely this congressionally delegated authority which the New York Stock Exchange exercised in this case. Acting pursuant to its § 6(d) obligation to protect investors, the Exchange formulated Rule 383 (imposing the interim service charge) in order to insure the financial stability of its member firms. (248A-253A) The Exchange then formally submitted the rule to the SEC for approval in accordance with SEC Rule 17a-8, specifically noting in its submission that Rule 383 would be adopted pursuant to Article XV, Section 9 of the Exchange's Constitution, which expressly prohibits the sharing of service charges by member firms with their employees. (251A-253A)

Article XV, Section 9 was at that time (and had been for many years) on file with the SEC as is required by § 6(a)(3) of the Exchange Act, 15 U.S.C. § 78f(a)(3). Both prior to and immediately following the Exchange's formal submission of Rule 383, extensive discussions took place between Exchange officers and Commission officials concerning both the necessity for and the impact of the rule. (259A-261A; 265A-274A) The SEC, in discharge of its § 19(b) responsibilities to safeguard the financial responsibility of brokerage firms doing business on registered exchanges [§ 19(b)(1), 15 U.S.C. § 78s(b)(1)] and to pro-

tect investors by insuring the fixing of reasonable rates of commission and other charges [§ 19(b)(9), 15 U.S.C. § 78s (b)(9)], carefully scrutinized the rule. (259A-261A)

Conditions for the rule's approval were imposed. In its letter registering non-objection to Rule 383, the SEC expressly required that the Exchange take steps to assure that all brokerage services were restored to small investors. It also required that the Exchange insure that revenues derived as the result of Rule 383 were prudently employed by member firms "to improve their operations and financial position." In addition, the Commission specifically predicated its non-objection to the rule upon the Exchange's pledge to provide continuing financial data on the operation of the service charge so that its effects could be carefully monitored. (259A-261A; 414A)

Thereafter the SEC in fact maintained close surveillance over the administration of the service charge. (262A-264A) That the Commission was aware that the Exchange prohibited member firms from paying commission compensation to their registered representatives based on the service charge is beyond doubt. (416A) In addition to the fact that Article XV, Section 9 was on file with the SEC, the Commission received a telegram on May 19, 1970 from the Association of Investment Brokers requesting it to intervene and direct the Exchange to lift its restriction. (322A) This the Commission declined to do. (322A) Furthermore, hearings on the service charge were held by the SEC in July 1970, during which registered representatives again complained of the effects of Article XV, Section 9. (416A; 323A-326A) The Commission once more refused to direct the Exchange to alter the rule. Instead, it affirmatively permitted the service charge to continue in effect until March of 1972.

Under these circumstances, it is evident that the Exchange possessed and exercised governmental authority in

enacting Rule 383 and in refusing to alter Article XV, Section 9 of its Constitution.[3] The rule was duly adopted by the Exchange pursuant to its § 6(d) responsibilities. The Commission had, and actively exercised, its § 19(b) review jurisdiction over all aspects of the rule. See *Silver* v. *New York Stock Exchange, supra; Thill Securities Corp.* v. *New York Stock Exchange*, 433 F.2d 264 (7th Cir. 1970), *cert. denied*, 401 U.S. 994 (1971); *Kaplan* v. *Lehman Bros.*, 250 F.Supp. 562 (N.D. Ill. 1966), *aff'd*, 371 F.2d 409 (7th Cir.), *cert. denied*, 389 U.S. 954 (1967); *Gordon* v. *New York Stock Exchange*, 366 F.Supp. 1261 (S.D.N.Y. 1973), *aff'd*, 498 F.2d 1303 (2d Cir. 1974). As a consequence the rule had, at least for present purposes, the force of law, and effectively bound the member firms subject to it. See *Merrill Lynch, Pierce, Fenner & Smith* v. *Ware, supra.*

In the *Ware* case, the Supreme Court entertained and adjudicated on the merits the claim of a brokerage firm that the Exchange's Rule 347(b) (requiring arbitration of employer-employee disputes) pre-empted the field of labor relations for Exchange members and invalidated, under the Supremacy Clause, a state statute providing for judicial resolution of such disputes. After noting the close re-

---

[3] The District Court rejected this contention on the ground that not all self-regulation undertaken by an exchange subject to § 19(b) review by the Commission could be said to constitute government action. Reliance was placed upon *Silver* v. *New York Stock Exchange, supra.* (424A) The principal basis of the *Silver* decision, however, was that the action there under review was not even within the purview of § 19(b), 15 U.S.C. § 78s(b), and *could not* be examined by the SEC. Indeed, such lack of reviewability was the specific predicate for the Court's determination that antitrust immunity was not warranted. *Id.*, at 357-61. It has recently been held by this Court that where, in contrast, exchange self-regulation *does* fall within one of the designated categories of § 19(b), 15 U.S.C. § 78s(b), it is not amenable to subsequent judicial re-examination. *Gordon* v. *New York Stock Exchange*, 498 F.2d 1303 (2d Cir. 1974).

lationship between the pre-emption issue and the antitrust exemption issue previously dealt with in the *Silver* case, the Court set forth the specific parameters appropriate to analysis of these questions:

> "As is seen by our discussion above, §§ *6(d) and 19(b) of the Act*, 15 U.S.C. §§78f(d) and 78s(b), *establish the measure of congressionally delegated authority for self-regulation* in the national interest. Section 6(d) requires that exchange rules be 'just and adequate to insure fair dealing and to protect investors.' Section 19(b) gives the Commission limited power over certain types of exchange rules 'for the protection of investors or to insure fair dealing in securities' or to 'insure fair administration' of the exchanges. *Measured by these standards*, we conclude that the policy arguments advanced by Merrill Lynch do not require pre-emption of contrary state law by Rule 347(b)." (414 U.S., at 134-135; emphasis added)

The Court rejected the pre-emption claim advanced in *Ware* because it found the relationship between (1) compulsory employer-employee arbitration and (2) the Exchange Act's policy of investor protection to be either overly tenuous or altogether non-existent. The case leaves no doubt, however, that where a relationship between the challenged rule and the purposes of the Act *does* exist,[4] an Exchange rule adopted pursuant to § 6(d) and reviewed by the SEC under § 19(b) will bear the full force of Federal law.

That is precisely the situation presented to this Court and to the member firm defendants by the instant case:

---

[4] In the present action, the District Court expressly held after a trial that "the limitations the Exchange imposed themselves furthered the purposes of the securities laws." (436A)

imposition of an Exchange rule related to the purposes of the Act which actually was reviewed by the SEC.

II

The Exchange Act Confers Broad Disciplinary Authority on the New York Stock Exchange for Dealing with Members who Violate Exchange Rules.

In addition to conferring broad legislative powers on securities exchanges, the Exchange Act also authorizes—and, indeed, mandates—that exchanges make provision for disciplinary action against their members for the violation of exchange rules. Under § 6(b) of the Act, 15 U.S.C. § 78f(b), an exchange may not even be registered with the Securities and Exchange Commission unless its rules provide for the "expulsion, suspension or disciplining of a member for conduct or proceedings inconsistent with just and equitable principles of trade. . . ." Furthermore, § 6(c) of the Act, 15 U.S.C. § 78(c), provides that nothing in the Act "shall be construed to prevent any exchange from adopting *and enforcing* any rule not inconsistent" with the Act or any rule or regulation adopted by the Securities and Exchange Commission pursuant to it. (emphasis added)

The New York Stock Exchange has taken appropriate action to comply with and implement these statutory provisions. Article XIV, Section 6 of the Exchange's Constitution authorizes the expulsion or suspension of a member firm adjudged guilty of violating (1) the Exchange's Constitution, (2) a rule adopted pursuant to the Constitution, (3) a resolution of the Exchange's Board of Directors "regulating the conduct or business of members,"

or (4) "just and equitable principles of trade." Under § 20 of the same article, a member firm which is expelled or suspended is effectively deprived of "all rights or privileges" arising out of membership.

The import of these rules in the context of the present case is clear and unmistakable.[7] Had any member firm refused to comply with the Exchange's directive (Article XV, Section 9) not to pay commission compensation to its registered representatives based on the interim service charge imposed by Rule 383, it would have subjected itself to disciplinary measures and penalties tantamount to financial suicide. Moreover, there is no provision in the Exchange Act for substantive review of Exchange disciplinary actions either by the SEC or a court.[5] Unlike disciplinary actions of a national securities association, which are subject to plenary review by the SEC and more limited further review by the Courts of Appeals, see §§ 15A(g), 15A(h)(1) and (2) and 25, 15 U.S.C. §§ 78o-3(g), 78o-3(h)(1) and (2), and 78y, Exchange disciplin-

---

[5] Several Federal courts have recently held that stock exchange disciplinary proceedings are sufficiently in the nature of "government" proceedings to trigger the procedural safeguards of the due process clause of the Fifth Amendment. See *Intercontinental Indus., Inc.* v. *American Stock Exchange*, 452 F.2d 935 (5th Cir. 1971); *Villani* v. *New York Stock Exchange*, 348 F. Supp. 1185 (S.D.N.Y. 1972), *aff'd*, 489 F.2d 1 (2d Cir. 1973). As a consequence, a Federal District Court would have authority to cancel a penalty imposed on a member firm by an exchange where it found, for example, that the defendant had not been given adequate notice of hearing, that the hearing panel was impermissibly biased, etc.

There is no authority for the view, however, that a District Court could pass upon the *substance* of an Exchange rule adopted pursuant to §§ 6(d) and 19(b), 15 U.S.C. §§ 78f(d) and 78s(b), in order to relieve a defendant member of a penalty imposed upon him by an exchange. Indeed, to the contrary, it would appear that a District Court lacks jurisdiction to pass upon such a question. See *Gordon* v. *New York Stock Exchange*, *supra*.

ary orders are final. Member firms are thus effectively bound by Exchange rules and are without recourse to appellate review of any kind.

III

No "Combination" or "Conspiracy" Within the Meaning of the Sherman Act Exists in this Case With Respect to the Member Firm Defendants.

In light of the arguments advanced in Sections I and II of this supplemental brief, it is evident that the New York Stock Exchange exercised governmental authority in enacting the interim service charge which is the subject of the instant lawsuit and in prohibiting its member firms from paying commission compensation to their registered representatives based upon the service charge. As a consequence, under the teaching of the Supreme Court's decision in *Merrill Lynch, Pierce, Fenner & Smith* v. *Ware*, *supra*, the prohibition had the full force and effect of a Federal law.

It is further evident that the Exchange possessed and was prepared to exercise governmentally sanctioned disciplinary power over any member firm which refused to comply with the restrictions it imposed,[6] and that such disciplinary measures would have had a devastating impact on the firms, from which they could have obtained no relief from any other governmental agency.

Under these two sets of circumstances so unlike those which prevail outside the arena of this highly regulated industry, the mere adherence of the member firm defendants to the Exchange's rule cannot be deemed the kind of

[6] See note 5, *supra*.

"private" conduct toward which the Sherman Act is directed and by which the perimeters of its reach are set. *Parker* v. *Brown*, 317 U.S. 341 (1943); *Eastern R.R. Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961).

CONCLUSION

The decision of the District Court dismissing this action against the member firm defendants should be affirmed because their adherence to the Constitution and rules of the New York Stock Exchange was not unlawful.

Respectfully submitted,

BREED, ABBOTT & MORGAN
Attorneys for Defendant
Walston & Co., Inc.
1 Chase Manhattan Plaza
New York, New York 10005

SPEAR & HILL
Attorneys for Defendant
Reynolds & Co.
One State Street Plaza
New York, New York 10004

CAHILL GORDON & REINDEL
Attorneys for Defendant
Loeb, Rhoades & Company
80 Pine Street
New York, New York 10005

BROWN, WOOD, FULLER, CALDWELL & IVEY
Attorneys for Defendant
Goodbody & Co.
One Liberty Plaza
New York, New York 10006

GUGGENHEIMER & UNTERMYER
Attorneys for Defendant
Oppenheimer & Co.
80 Pine Street
New York, New York 10005

SULLIVAN & CROMWELL
Attorneys for Defendants
Bache & Co., Inc.
Kidder, Peabody & Co., Inc.
Dean Witter & Co., Inc.
Smith, Barney & Co., Inc.
Dominick International Corp.
48 Wall Street
New York, New York 10005

HALL, MCNICOL, MARETT & HAMILTON
Attorneys for Defendant
Thomson & McKinnon Auchincloss Inc.
330 Madison Avenue
New York, New York 10017

SIMPSON THACHER & BARTLETT
Attorneys for Defendants
Lehman Brothers and Tucker
Anthony & R. L. Day
One Battery Park Plaza
New York, New York 10004

WINTHROP, STIMSON, PUTNAM AND ROBERTS
Attorneys for Defendants
Bear, Stearns & Co. and
R. W. Pressprich & Co., Inc.
40 Wall Street
New York, New York 10005

SEWARD & KISSEL
Attorneys for Defendant
Rauscher Pierce Securities Corporation
63 Wall Street
New York, New York 10005

Service of a copy of the
within *matter* is hereby admitted
Date: *10/30/74* Time: *11:30*
ABRAHAM E. FREEDMAN
L. Legres

COPY RECEIVED
OCT 30 1974
MILBANK, TWEED, HADLEY & McCLOY
ATTORNEYS FOR *Appellees*